



INTERIOR BOARD OF INDIAN APPEALS

Estate of Russell Harold Bobb

5 IBIA 92 (05/10/1976)

Judicial review of this case:

Bobb v. United States, Civil C-77-314 (E.D. Wash.)

No. 77-1460 (9th Cir.)

Related Board case:

2 IBIA 214



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF RUSSELL HAROLD BOBB

IBIA 74-33 (Supp.)

Decided May 10, 1976

Petition to reopen.

Denied and dismissed.

1. Indian Probate: Reopening: Generally

Under the former provisions of 25 CFR 15.18, (now 43 CFR 4.242) reopenings are limited to those persons who had no notice of the original proceedings and were not on the reservation, thus, one in attendance at the original hearing or who had notice has no standing to file a petition to reopen.

2. Indian Probate: Reopening: Waiver of Time Limitation

A petition to reopen on the grounds of lack of notice, filed more than 3 years after the entry of the order determining heirs, will not be granted unless there is compelling proof that the delay was not occasioned by the petitioner's lack of diligence.

APPEARANCES: Wilson Bobb, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE WILSON

Wilson Bobb, Sr., hereinafter referred to as petitioner, under date of March 4, 1974, filed with this Board a petition to reopen the estate of Russell Harold Bobb. Thereafter, at the written request of the petitioner, his petition of March 4, 1974, was dismissed with prejudice by this Board on March 26, 1974.

On January 22, 1976, the petitioner filed another petition to reopen the estate herein with Administrative Law Judge Robert C. Snashall. The petition was referred to and received by this Board on January 29, 1976.

In support of the petition the petitioner alleges in pertinent part:

* * * * *

On October 16, 1973, I requested that my son's estate be reopened because I had been wrongfully denied my right to share in the estate.

On March 21, 1974, after being advised by Officers in the Yakima Agency at Toppenish, Washington, that by reopening the estate the inheritance of my descendents would be affected I sent a letter to the Chairman, Board of Indian Appeals, withdrawing my request to reopen the estate.

* * * * *

On March 26, 1974, Administrative Judge Wilson dismissed my petition with prejudice.

I have since been informed that I was erroneously advised of the rights of my descendents by the Yakima agency and was misled to withdraw my request to reopen the estate.

* * * * *

Ordinarily, a petition dismissed with prejudice would preclude consideration of a subsequent petition involving the same subject matter. However, notwithstanding the prior dismissal, the petition of January 22, 1976, will be considered.

The record indicates that the decedent, Russell Harold Bobb, died June 15, 1967, and that thereafter on February 7, 1968, notice of hearing was mailed to all probable heirs, including the petitioner and other parties. Moreover, notices of the hearing scheduled for March 6, 1968, at the Warm Springs Agency, Warm Springs, Oregon, were posted at the Yakima Indian Agency, Toppenish, Washington; Warm Springs Agency, Warm Springs, Oregon; Post Offices at Warm Springs, Oregon, Wapato, Washington, and Grande Ronde, Oregon.

From the evidence adduced at the hearing of March 6, 1968, an Order Determining Heirs was issued on June 18, 1968, by Administrative Law Judge Richard J. Montgomery.

A copy of the Order of June 18, 1968, was mailed on the same date to all the heirs as determined and other interested parties, including the petitioner, together with notice that any person aggrieved by the Order would have 60 days from the date of the notice to file a petition for rehearing. No petition for rehearing having been filed, the Order of June 18, 1968, became final.

Clearly, the petitioner had notice of the hearing held March 6, 1968. Moreover, he was mailed a copy of the Order Determining Heirs dated June 18, 1968.

The provision of 43 CFR 4.242 upon which the petitioner relies and seeks relief in relevant part reads:

(a) Within a period of 3 years from the date of a final decision issued by an Administrative Law Judge * * * but not thereafter * * * any person claiming an interest in the estate who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted may file a petition in writing for reopening of the case. * * *

As hereinabove indicated, the petitioner had notice of the probate hearing. Furthermore, he was mailed a copy of the final order or decision. The petitioner is clearly without standing to file under 43 CFR 4.242 and his petition to reopen must be denied.

[1] Under the former provisions of 25 CFR 15.18, (now 43 CFR 4.242) reopenings are limited to those persons who had no notice of the original proceedings and were not on the reservation, thus, one in attendance at the original hearing or who had notice has no standing to file a petition to reopen. Estate of Philomene (Jessie P.) Carpenter, Laforge, Jefferson, Gardner, IA-1444 (April 21, 1966).

Assuming, arguendo, that the petitioner could have qualified under 43 CFR 4.242, his petition to reopen would have been of no avail for the reasons hereinafter set forth.

The petitioner has not alleged nor has he shown any proof that the delay of some 6 years in asserting his claim to the estate herein was not a result of his lack of diligence so as to justify the waiver of the 3-year time limitation.

[2] A petition to reopen on the grounds of lack of notice, filed more than 3 years after the entry of the order determining heirs, will not be granted unless there is compelling proof that the delay was not occasioned by the petitioner's lack of diligence. Estate of George Minkey, 1 IBIA 1 (August 13, 1970). [Same case as 1 IBIA 56 (December 29, 1970).]

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition to reopen of Wilson Bobb, Sr., dated February 20, 1976, and received by the Board on March 1, 1976, be, and the same is for the reasons hereinabove set forth hereby DENIED and DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Wm. Philip Horton
Board Member